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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/075,861
Filing Date: February 14, 2002
Appellant(s): MESERTH ET AL.

Joseph Lally
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/8/07 appealing from the Office action mailed 10/31/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5999162	Takahashi	12-1999
6507349	Balassanian	1-2003

6064401 Holzman 5-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al., US Patent 5999162, and further in view of Balassanian, US Patent 6507349.

Takahashi et al. teaches an icon as a portion of the display (winding-up position line, Figure 10) determining the position of the icon (predetermined) and refreshing the graphical representation responsive to receiving a new data point (Column 4, lines 45-53), wherein the position of the icon determines how much historical data is retained in the refreshed display (Column 2, lines 11-20). While Takahashi et al. teaches refreshing the display where the amount of information to be retained is based on a user determined position, they fail to show the user positionable icon as a portion of the display as recited in Claims 1 and 8. In the same field of the invention, Balassanian teaches a graphical display with data adjustment similar to that of Takahashi et al. In addition, Balassanian further teaches a user-positionable icon as a portion of the display

controlling the amount of information to be retained onscreen (Figures 4L and 4M with corresponding text). It would have been obvious to one of ordinary skill in the art, having the teachings of Takahashi et al. and Balassanian before him at the time the invention was made, to modify refreshing of the display where the amount of information to be retained is based on a user determined position taught by Takahashi et al. to include the user-positionable icon of Balassanian, in order to obtain an interface for controlling the amount of information to be retained when the screen is refreshed. One would have been motivated to make such a combination because an interactive and runtime control for setting the desired display area would have been obtained, as taught by Balassanian.

As in Claims 2 and 9, Takahashi teaches the graphical representation to be refreshed when the graphical representation is full (Column 2, lines 15-21).

As in Claims 3 and 10, Takahashi teaches shifting all data points horizontally by a displacement, the displacement determined by the position of the icon ("moving the graph to a predetermined position toward the one end of the display screen", Column 2, lines 14-16).

As in Claims 4 and 11, Takahashi teaches appending a new data point to the display without discarding any historical data when the display is not full (Column 2, lines 15-21).

As in Claims 5 and 12, Takahashi teaches the position of the icon determining the location of the first new data point occurring after the display is refreshed (Column 7, lines 42-47).

As in Claims 6 and 13, Takahashi teaches the representation including a left side vertical axis and a right side vertical axis, wherein data points in proximity to the left-side vertical axis are older than data points in proximity to the right-side vertical axis (Column 5, lines 7-14, Figures 10-11 and corresponding text).

As in Claims 7 and 14, Takahashi teaches the positioning of the icon at the left-side vertical axis will erase all historical data when the representation is refreshed and wherein positioning of the icon at the right side vertical axis will erase a single data point when the representation is refreshed (Columns 7-8, lines 61-6, respectively).

Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al., US Patent 5999162, hereinafter Takahashi, and further in view of Holzman et al., US Patent 6064401, hereinafter Holzman.

As in Claim 15, Takahashi teaches an icon as a portion of the display (winding-up position line, Figure 10) determining the position of the icon (predetermined) and refreshing the graphical representation responsive to receiving a new data point (Column 4, lines 45-53), wherein the position of the icon determines how much historical data is retained in the refreshed display (Column 2, lines 11-20). While Takahashi teaches refreshing the display where the amount of information to be retained is based on a user determined position, they fail to show the user positionable icon as a portion of the display moveable along the horizontal axis as recited in Claim 15. In the same field of the invention, Holzman teaches a realtime graphical display with a horizontal axis representing time and the vertical axis representing a parameter

of interest and data adjustment similar to that of Takahashi. In addition, Holzman further teaches a user-positionable icon as a portion of the display controlling the amount of information to be retained onscreen moveable along the horizontal axis (Figure 6 and corresponding text). It would have been obvious to one of ordinary skill in the art, having the teachings of Takahashi and Holzman before him at the time the invention was made, to modify refreshing of the display where the amount of information to be retained is based on a user determined position taught by Takahashi to include the user-positionable icon of Holzman, in order to obtain an interface for controlling the amount of information to be retained when the screen is refreshed. One would have been motivated to make such a combination because an interactive and runtime control for setting the desired display area would have been obtained, as taught by Holzman (Col. 1, lines 27 et seq.).

As in Claim 16, Takahashi teaches the graphical representation to be refreshed when the graphical representation is full (Column 2, lines 15-21).

As in Claim 17, Takahashi teaches shifting all data points horizontally by a displacement, the displacement determined by the position of the icon ("moving the graph to a predetermined position toward the one end of the display screen", Column 2, lines 14-16).

As in Claim 18, Takahashi teaches appending a new data point to the display without discarding any historical data when the display is not full (Column 2, lines 15-21).

As in Claim 19, Takahashi teaches the position of the icon determining the location of the first new data point occurring after the display is refreshed (Column 7, lines 42-47).

As in Claim 20, Takahashi teaches the representation including a left side vertical axis and a right side vertical axis, wherein data points in proximity to the left-side vertical axis are older than data points in proximity to the right-side vertical axis (Column 5, lines 7-14, Figures 10-11 and corresponding text).

As in Claim 21, Takahashi teaches the positioning of the icon at the left-side vertical axis will erase all historical data when the representation is refreshed and wherein positioning of the icon at the right side vertical axis will erase a single data point when the representation is refreshed (Columns 7-8, lines 61-6, respectively).

(10) Response to Argument

Takahashi teaches a data display control referred to as a "Winding-up process" with some improvements over similar processes much like the application at hand. Col. 1, beginning at line 25 has a good explanation of how the "Winding-up process" works. Col. 2, line 15 describes a concise explanation of the invention: "moving the graph to a predetermined position toward the one end of the display screen at a speed which can be followed by the operators eyes when the succession of graph points reaches the end of a graph display area ..." Takahashi goes on to say "The predetermined position may be located at an arbitrary position ..." (Col. 2, lines 22-23) and "Further, the operator can freely adjust the winding-up speed and position ..." (Col. 10, lines 44-45). In accordance with the claims, Takahashi teaches providing a user positionable predetermined position as a portion of the display (predetermined position exists in some portion of the display), determining the position of the predetermined position (Col. 10, lines 44-45), and refreshing the graphical representation responsive to receiving a new data point (Col. 4, lines 38-39), wherein the predetermined position determines how much historical data is retained in the refreshed display (if the predetermined position is positioned before the first data point, then all of the previously recorded historical data points are shown, however, if the predetermined position is positioned after the first data point, the graph adjusts itself to the windup position, showing the amount of historical data that can fit between the predetermined position and the other end of the graph and no longer retaining the beginning data points). Therefore, Takahashi teaches the predetermined position that may be freely adjusted

by the operator as opposed to the explicit claim language which recites "a user positionable icon". Takahashi stops short at teaching the predetermined position can be freely adjusted and does not explain how this is done, therefore Balassanian has been introduced to cure this deficiency.

Claims 1-14

Balassanian teaches another data display control device for manipulating graphs and historical data outputs (Col. 4, lines 24-30) just as is done in Takahashi. Furthermore Balassanian teaches three separate examples that read on the "user positionable icon as a portion of the display".

In Figure 4D, ref. 405, Balassanian teaches a hand icon that is user positional which determines how much historical data is retained in the refreshed display (Col. 5, lines 21-42).

Figures 4I and 4J show the second example of the "user positionable icon as a portion of the display". Ref. 405 and 470, the user positionable icon, may be placed anywhere on the screen and moved to a position. That position determines how much data is to be displayed on the screen. In the position marked 405 three pieces of historical data are shown: the car, the stick figure, and the pig (Fig. 4I). In the position marked 470 only two pieces of historical data are shown: the stick figure, and the pig (Fig. 4I). Therefore this constitutes a user positionable icon as a portion of the display that determines how much historical data is retained.

The third example is illustrated by Figures 4L and 4M. In Figure 4L, Ref. 480 or 485 constitute user positionable icons as a portion of the display. Balassanian shows

here that the position of these icons determines how much data will be retained by changing the size of the window itself (Col. 10, beginning on line 23). If the window is made larger, more data will be displayed (Col. 10, lines 24-27), and if the icons make the window smaller, some or none of the data (as in Fig. 4M) will be retained and the rest will be obscured from view.

In response to the applicant's argument on page 5, beginning line 20, "that the Office Action stops short of stating that Balassanian teaches "providing a user positionable icon as a portion of the display" the examiner disagrees. Figures 4D, 4I, 4J, 4L and 4M all teach providing a user positionable icon as a portion of the display (ref. 405, 470, 485 and 480). Furthermore the applicant's argument on page 9, beginning on line 3 can also be seen clearly illustrated by the inclusion of the aforementioned reference numbers. It is irrelevant whether code for the icon comes from. A system cursor used with Balassanian would be inherent in it's teachings regardless. However it appears that the cursor is a part of Balassanian's application because it is a hand-shaped icon, not the default pointer icon. The applicant's further argue that "Balassanian's moveable icon 405 and the associated window control 480 have no effect on the data itself, but instead control only the size of the window" (Pg. 10, lines 4-6). The examiner stresses that the claims recite "the position of the icon determines **how much** historical data is retained" and does not effect the data itself either. Changing the size of the window by the position of icon ref. 480 or 485 does exactly what the claim states, it changes the amount of historical data to be retained on the refreshed display.

In response to the applicant's argument on page 6, beginning line 15, "there is no motivation to modify or combine the references to arrive at the claimed combination", the examiner disagrees. Balassanian introduces new containers and new ways to manipulate containers of data, and that this is advantageous because it "it provides a simple and efficient user interface that even novice users can easily understand and use". Furthermore, both applications show graph manipulations.

Claims 15-21

Takahashi teaches computer code means for refreshing the graphical representation responsive to receiving a new data point (Column 4, lines 45-53), wherein the predetermined position determines how much historical data is retained in the refreshed display (Column 2, lines 11-20). *See also arguments above.* Takahashi stops short at the teaching the predetermined position can be freely adjusted (Col. 10, line 45) and does not explain how the adjustment is done, whether it be by icon or text box or merely coding therefore Holzman has been introduced to cure this deficiency.

Holzman teaches computer code means for generating a graphical representation of the real time data on the display with a horizontal axis representing time (Fig. 6 "TIME (MINUTES)") and the vertical axis representing a parameter of interest (Fig. 6 "%O2 SAT"). Holzman further teaches computer code means for displaying a user-positionable icon as part of the graphical representation and for determining the position of the icon (Fig. 6, ref. 611) wherein the user positionable icon is moveable along the horizontal axis (Col. 5, lines 64-67).

The applicant argues that "Claim 15 recites an express relationship between a refresh event and the position of the user positionable icon, Holzman does not teach or suggest any such relationship". The refreshing step is done in response to receiving a new data point, as is done by Takahashi. The position of the icon is used merely to determine how much to continue displaying. This position is taught by Takahashi's reference to a predetermined position that can be set by the user (Col. 10, line 45). Takahashi teaches if the predetermined position is positioned before the first data point, then all of the previously recorded historical data points are shown, however, if the predetermined position is positioned after the first data point, the graph adjusts itself to the windup position, showing the amount of historical data that can fit between the predetermined position and the other end of the graph and no longer retaining the beginning data points (process explained Col. 5, line 36 – Col. 6, line 2). Holzman is merely introduced to show a related system that changes the amount of data shown by using an icon-setting method as opposed to an operator adjustable predetermined position.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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